

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JAMES ROBERT WORKMAN,

Petitioner,

v.

CIVIL ACTION NO. 2:23-cv-00299

AARON WESTFALL, *Superintendent,
Parkersburg Correctional Center,*

Respondent.

MEMORANDUM OPINION AND ORDER

On March 30, 2023, the Petitioner, proceeding *pro se*, filed his *Complaint* (Document 2) in this matter, which has been construed and docketed as a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Pending in the matter is the *Respondent's Motion to Dismiss* (Document 9) filed on June 28, 2023.

By *Standing Order* (Document 3) entered on March 30, 2023, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On December 4, 2023, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 14) wherein it is recommended that the *Respondent's Motion to Dismiss* (Document 9) be granted, the Petitioner's Petition for a Writ of Habeas Corpus (Document 2) be dismissed, and this matter be removed from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by December 21, 2023.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Respondent's Motion to Dismiss* (Document 9) be **GRANTED**, the Petitioner's Petition for a Writ of Habeas Corpus (Document 2) be **DISMISSED**, and this matter be **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: January 2, 2024



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA